



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

South Tower – Suite 1950
225 Peachtree Street
Atlanta, GA 30303
(404) 331-5300 FAX: (404) 331-5280

January 16, 2013

Jacquelyne K. Bennett, Chief
Management Employee Relations Branch
Department of the Army
Civilian Personnel Advisory Center
Building 5304, Sparkman Center
Redstone Arsenal, AL 35898

Sharon S. Powers, Assistant Vice President
AFGE, Local 1858
c/o Building 5400
Redstone Arsenal, AL 35898

Re: Department of the Army
Aviation and Missile Research Development &
Engineering Center
and
American Federation of Government
Employees, Local 1858
Redstone Arsenal, Alabama
Case No. AT-CA-13-0174

Ladies:

I have enclosed a copy of the unfair labor practice charge which the Charging Party filed with my Office. I have assigned the case number shown above to this charge. It is important that you cooperate fully during the investigation of the charge so my office can timely complete the investigation and make a decision. The Agent who has been assigned to investigate the charge will contact you as soon as possible. If you have any questions, please contact the Agent using the phone number or e-mail address at the end of this letter.

For the Charging Party:

If you are the party who filed the charge and have not already done so, please submit the following, so my office **receives** it by **January 28, 2013**:

1. A list of witnesses – names, positions, day and evening telephone numbers, and a summary of their expected testimony about their personal knowledge of the charge.
2. Copies of all relevant documents, with an Index if the submission is lengthy.

Section 2423.4(e) of the FLRA's Regulations requires you to provide this evidence/information. If you did not submit any evidence or information when you filed the charge, and do not provide this information by **January 28, 2013**, I may dismiss the charge for lack of cooperation. You are responsible for confirming that my office has received all supporting evidence and information. You also must respond to the Agent's attempts to communicate with you during the investigation.

For the Charged Party:

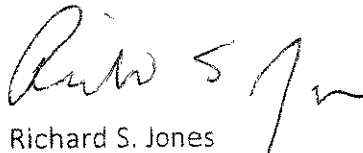
If you are the party against whom this charge is filed, please review the allegations in the charge and submit a written position to my office. You are expected to cooperate fully in the investigation, and the Agent may ask you for documents or a list of witnesses.

For Both Parties:

To assist you in understanding how we process an unfair labor practice charge, I have enclosed an information sheet describing what happens during and after an investigation. If someone other than you will be representing your party in this case, please complete the enclosed "Notice of Designation of Representative."

The General Counsel encourages parties to informally resolve unfair labor practice charges, and the assigned Agent is available to assist the parties in resolving this matter. I have enclosed a question and answer sheet that gives information about the General Counsel's dispute resolution services.

Sincerely,



Richard S. Jones
Regional Director

Assigned Agent: Mark D. Halverson
404/331-5300 Ext. 5015
mhalverson@flra.gov

Enclosed: Description of Unfair Labor Practice Investigation Procedure
Alternative Dispute Resolution Services Q&As
Notice of Designation of Representative

FDR FLRA USE ONLY



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST AN AGENCY

Case No.

92-10-13-0174

Date Filed

12/31/12

Complete instructions are on the back of this form.

1. Charged Activity or Agency

Name: AMRDEC

Address: Building 5400 Redstone Arsenal AL 35898

Tel.#: () Ext.

Fax#:

2. Charged Activity or Agency Contact Information

Name: Thomas Channell

Title: Associate Director Engineering Dir

Address: Building 5400 Redstone Arsenal AL 35758

Tel.#: (256) 842-8505 Ext.

Fax#:

2. Charging Party (Labor Organization or Individual)

Name: AFGE Local 1858

Address: Building 3202
Redstone Arsenal, AL

Tel.#: 256.876.4880 Ext.

Fax#:

4. Charging Party Contact Information

Name: Sharon S. Powers

Title: Assistant VP AMRDEC AFGE Local 1858

Address: a trailer outside of Building 5400

Tel.#: ((256) 251-0445 Ext.

Fax#:

5. Which subsection(s) of 5 U.S.C. 7116(e) do you believe have been violated? (See reverse) (1) and 1-8

6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles.

On 17 Dec 12 I called Sara (UAH IT support) at the AMRDEC IT Mission Support and she told me Mr. Thomas Channell told them to removed me from all email and AMRDEC IT access.

On 17 Dec 2012 Mr. Channell advised he was part of a PSRB (Preliminary Security Review Board) who reviewed "credible statements against me." This capability was not found in AR 890-67 The PSRB provided recommendations and COL Hamilton, RSA Commander, suspended my security clearance and Internet access. At that point I could no longer function effectively as an AFGE Local 1858 AMRDEC rep for I am now removed from the AMRDEC workforce by email access and telephone directory. In addition I do not have access to any websites assisting me in my Union duties or my Engineering duties.

During the 17 Dec 12 meeting with Mr. Thomas Channell (Associate Director for Systems Engineering, Engineering Directorate) Mr. Thomas Channell requested two Redstone Arsenal Military Police maintain presence outside the meeting during the entire discussion between myself, Sharon S Powers (Assistant VP AMRDEC AFGE Local 1858), Abner Memweather (AFGE Local 1858 President), Chris Ryker (RSA INCOM Security Office), Vicki Fuller (AFGE Local 1858 JD), and Mr. Stan Sherrod (Deputy Director Engineering Directorate). In this meeting Chris Ryker informed me my security clearance had been suspended due to "credible statements" sent to the PSRB. Mr. Thomas Channell was one of the people providing the credible statements. I filed an EEO Complaint against Mr. Thomas Channell before he assigned me directly under his supervision in March 2012 and also file Office of Special Counsel against him due to retaliation from AMRDEC Government and Contractor employees after participating in Barack Obama's Executive Order 13522.

On 20 Dec 12 Mr. Thomas Channell waited in my RSIC Rm 103 office with 2 other Military Police. He and the MPs were waiting for me to come into work so they could watch me box up my belongings and move to a trailer Mr. Thomas Channell assigned me. On 20 Dec 12 I was sick and called Sara Moomey to say I wasn't coming into work. Mr. Thomas Channell boxed my belongings without my permission and moved them to a double wide trailer south of Building 5400.

On 26 Dec 12 I returned to work to learn from a Mr. Mayfield at RSIC the details of 20 Dec 12 above. I then called Charlotte Jones to learn Mr. Thomas Channell wrote up orders for me to follow and to find the double wide trailer I would be working in. The orders written by Mr. Thomas Channell on 20 Dec 12 and the condition of the trailer he assigned me in my opinion violates my Civil Rights and basic Human Rights. The trailer I am assigned by Mr. Thomas Channell is next to an Environmental Investigation site, has animal damage to the foundation, has water damage, has black mold, and a metal barred door on the 2nd exit.

I am continually harassed by Mr. Thomas Channell for participating in AFGE Local 1858 activities, for being an Assistant VP AMRDEC AFGE Local 1858 representative and for participating in the Barack Obama Executive Order 13522. I've been told by many AMRDEC leaders (Mr. Thomas Channell's first MFR) to not use my AFGE Local 1858 Union signature when I am communicating with AMRDEC management regarding Union issues and my security clearance issues, including Sharon BoClair AMRDEC Security. I can provide all the memos substantiating my claims and signed by Mr. Thomas Channell.

7. Have you or anyone else raised this matter in any other procedure? ☒ No ☐ Yes If yes, where? (see reverse)

8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT. 18 U.S.C. 1001 THIS CHARGE WAS SERVED ON THE PERSON IDENTIFIED IN BOX #3 BY (check "X" box) ☒ Fax ☐ 1st Class Mail ☐ In Person

☐ Commercial Delivery ☒ Certified Mail

Sharon S Powers

Type or Print Your Name

Your Signature

Date

28 Dec 12

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

NOTICE OF DESIGNATION OF REPRESENTATIVE

Case No.

AT-CA-B-0174

TO:

Regional Director
Atlanta Regional Office
Federal Labor Relations Authority
South Tower, Suite 1950
225 Peachtree Street
Atlanta, GA 30303

I, the undersigned party, hereby designate as my representative in this proceeding, the person whose name and address appears below. Said representative is to be served copies of all formal documents and written communications in this proceeding, excepting subpoenas. This designation shall remain valid until a written revocation is filed by me.

Signature of party (please sign in ink)

Representative's name, address, zip code (print or type)

Title

Area Code

Telephone Number

FLRA Form 75
Rev. 3-80

MB4

ATMADU
Redstone Arsenal
AL

CASE NUMBER: 02-09-13-0174DATE FILED: 12/31/12PROFESSIONAL ASSIGNED: (Code P1) MDADATE: 12-31-12

PROFESSIONAL REASSIGNED: (Code P2) _____

DATE: _____

PROFESSIONAL CO-ASSIGNED: (Code P3) _____

DATE: _____

OPENING LETTER ISSUED: (Code O1) _____

INITIAL ISSUE CODE: AA2.01DISPOSITIVE ISSUE CODE: A02.18; A01.11

DESCRIPTION (AN ENTRY MUST NOW BE MADE IN THIS BLOCK)

- ☐ Exec. Order; Labor Relations forum activities or section 7106(b)(1)
☐ Raises novel or interesting issue
☐ Involves potentially sensitive issue
☐ Concerns an issue of nationwide impact that may cross Regional Office geographic or jurisdictional boundaries
☐ Injunction requested by Charging Party
☐ Not Applicable

COMMENTS: (e.g., Related Case Number or any other information region would like to add)

KEY WORD CODES: (INSERT APPLICABLE CODE NUMBER IN FOLLOWING ACTION TABLE)

Example: Withdrawal Solicitation was After RD Determination; record A2" for Withdrawal Solicitation

Withdrawal Solicitation

- 1a) Prior to RD determination w/supervisory approval
 1b) Prior to RD determination w/o supervisory approval
 ② After RD determination
 3) Unsolicited withdrawal

Cooperation (by charged party)

- 1) Full cooperation with affidavits and witnesses
 2) Agent talked to witnesses - no affidavits
 3) Submission of documentary evidence
 ④ Submission of statement of position
 5) Agent talked to charged party representative
 6) Cooperation not required

Method

- 1) On-site affidavits and evidence
 ② Telephone affidavits
 3) Sworn questionnaire
 4) Confirming letters
 5) Unsworn questionnaire
 6) On-site conversation
 7) Telephone/E-mail conversation

Scope

- 1) Dispositive action without the taking of formal evidence
 2) Dispositive action prior to completion of full investigation
 ③ Dispositive action after full investigation

Remedy

- 1) Backpay - dollar amount _____
 2) Make whole - dollar amount _____
 3) Status quo ante (bargaining)
 4) retroactive bargaining
 5) rescission of action (non-bargaining)
 6) other traditional remedy - FLRA posting, cease & desist order, prospective order (cases involving formal discussion, Weingarten, dues withholding, (a)(1) statement, prospective bargaining)
 7) novel remedy (i.e., supervisory training)
 8) other

Prosecutorial discretion

- ① Yes
 ② No



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
225 PEACHTREE STREET N.E., SUITE 1950, ATLANTA, GA 30303
(404) 331-5300 FAX: (404) 331-5280

April 30, 2013

Sharon S. Powers,
AMRDEC Vice President
AFGE Local 1858
Building 3202
Redstone Arsenal, AL 35898

Re: Department of the Army,
U.S. Army Research, Development, and Engineering
Command,
U.S. Army Aviation & Missile Research,
Development & Engineering Center,
Engineering Directorate
and
American Federation of Government Employees,
AFL-CIO, Local 1858
Redstone Arsenal, Alabama
Case No. AT-CA-13-0174

Dear Ms. Powers:

The FLRA Atlanta Region investigated your charge alleging that the Department of the Army, U.S. Army Research, Development, and Engineering Command, U.S. Army Aviation & Missile Research, Development & Engineering Center, Engineering Directorate, Redstone Arsenal, Alabama (the Agency or AMRDEC) violated Sections 7116(a)(1) and (2) and/or (4) of the Federal Service Labor-Management Relations Statute (the Statute) on or about December 17, 2012, and again December 20, 2012, by retaliating against you for filing EEO complaints against your supervisor; for whistleblowing on violations of various regulations; filing complaints with the Office of Special Counsel; for reporting to the Redstone Arsenal Police and OSHA that your blood and office were contaminated with cadmium; and for engaging in Union activity as a Vice President of Local 1858 for AMRDEC.¹ You alleged that AMRDEC retaliated against you by suspending your local access to classified information, the internet and e-mail on December 17, 2012, and, on December 20, 2012, boxing up the contents of your office and moving you into a trailer where others with suspended local access to classified information are forced to work. An agency violates Sections 7116(a)(2) and/or (a)(4) of the Statute if it discriminates against an employee for engaging in protected activity.² Because there is insufficient evidence that the

¹ Box 5 of the FLRA Form 22 you prepared also alleged violations of Sections 7116(a)(3), (5), (6), (7), and (8). You requested that these allegations be withdrawn and I am granting your request.

² *Letterkenny Army Depot*, 35 FLRA 113, 118 (1990).

Agency took the cited actions because of your Union-related activities, I am not issuing a complaint on this aspect of the charge.

The charge also alleges that the Agency independently violated Section 7116(a)(1) of the Statute when it humiliated and/or intimidated you by having two military policemen wait outside the conference room where the meeting took place suspending your local access to classified data, and also when the Agency had military police escort your supervisor, Tom Channell (Channell) when he came to your office to remove your belongings. The standard for determining whether management's conduct independently violated Section 7116(a)(1) is an whether, under the circumstances, the conduct tended to coerce or intimidate the employee, or whether the employee could reasonably have drawn a coercive inference from the conduct.³ Because I conclude that a reasonable employee would not see the presence of security personnel in circumstances involving classified data as interfering with the right to form, join or assist a labor organization, I am not issuing a complaint on this aspect of the charge.

The investigation showed that you joined the Union and became Vice President for AMRDEC about four years ago in 2009. Your home organization at Redstone is AMRDEC's Engineering Directorate. While working on loan for a non-Redstone organization called the Project Management Office Aircraft Survivability Equipment (PMO ASE), you got into an altercation that caused you to be transferred back to the Engineering Directorate. Management then initiated an investigation under an Army Regulation known as AR 15-6 in May or June of 2012. The AR 15-6 concluded that, while at PMO ASE, you were disruptive and made a sexual comment in front of co-workers.

After that, you became concerned that your security clearance was at risk from the information being gathered by the AR 15-6 investigation, so you went to see Chris Ryker (Ryker), a Security Specialist in the Security Division of the Redstone Garrison (IMCOM). You advised Ryker that, among the reasons you feared losing your security clearance, was that you were active in the Union. Ryker sent an e-mail that you were accidentally copied with sometime in July, 2012, to the effect that there were no reports at that point that would affect your security clearance.

The AR 15-6 investigation results nevertheless triggered review of your situation by the IMCOM Security Division through an entity known as the Preliminary Security Review Board (PSRB). The PSRB issued a final decision in early December of 2012. This decision, dated December 11, 2012, was signed by Ryker for Security Division Chief, Ruby Childers. The decision essentially stated that your access to classified information and IT systems (internet and e-mail) were being temporarily suspended, "... based on the current supervisory reports of irrational behavior which causes a reliability concern. The credible derogatory information will be forwarded to the Central Clearance Facility so that a final determination can be made regarding your eligibility to access classified information."

³ *Dep't of Justice, Fed. Bureau of Prisons, Fed. Corr. Inst., Elkton, Ohio*, 62 FLRA 199 (2007).

The decision of the PSRB was delivered by Ryker to you at the December 17, 2012, meeting, which also included your supervisor, Channell, among others. Two Redstone Arsenal military policemen maintained a presence outside the meeting during the entire discussion. They did not enter the meeting or say anything. In this meeting, Ryker informed you that he had received reports about your erratic behavior and presented them to the PSRB. The PSRB then made a recommendation to Garrison Commander Colonel John S. Hamilton (Colonel Hamilton), to suspend your local access to classified material and IT Systems and he approved the recommendation.

Subsequently, on December 20, 2012, while you were out on sick leave, Channell and two security officers went to your office, boxed up your personal items, and took them to a trailer where employees with restricted access to classified information work.

The Authority uses a two-prong test to determine if an agency has discriminated or retaliated against an employee in violation of section 7116(a)(2) and/or (a)(4). First, the evidence must establish an inference of retaliatory intent. To establish this, the evidence must show that the employee engaged in protected activity and that the protected activity was a motivating factor in the agency's adverse treatment of the employee. Second, if there is evidence to establish this inference, the agency may rebut that inference by showing: (1) it had a legitimate justification for the action; and (2) it would have taken the same action even in the absence of protected activity.⁴

In this case, you engaged in protected activity by, among other things, being part of the Union bargaining team at term negotiations and serving as the Union co-chair for the labor-management forum implementing Executive Order 13552. While the investigation confirmed that the December 11, 2012, decision of the PSRB came after your cited protected activities, this evidence was not enough to establish the inference that your protected activities were a motivating factor in the AMRDEC's treatment of you. For closeness in time itself to constitute sufficient evidence of causality to establish an inference of retaliation, the "temporal proximity" must be very close.⁵ Here, the loose temporal relationship between your protected activities and the actions of the PSRB and Colonel Hamilton is insufficient to show that the protected activities were a motivating factor in the PSRB's decision to recommend to Colonel Hamilton that your local access to classified data and IT be temporarily suspended. For these reasons, I did not find a violation of section 7116(a)(2) and/or (4) of the Statute.

Turning to your claim that management used security officers in an attempt to intimidate you, the standard for determining whether management's conduct violates Section 7116(a)(1) is an objective one.⁶ The question is whether, under the circumstances, the conduct tends to coerce or intimidate the employee, or whether the employee could reasonably have drawn a coercive

⁴ *Letterkenny Army Depot*, 35 FLRA 113, 118 (1990).

⁵ *Dep't of the Treasury, Internal Revenue Serv., Wage and Inv. Div., Austin, Tex.*, 64 FLRA 39, 45 (2009) (citing *Clark County School Dist. v. Breeden*, 532 U.S. 268, 273 (2001)).

⁶ See note 3, *above*.

inference from the conduct.⁷ The standard is not based on the subjective perceptions of the employee or on the intent of the employer.⁸

In this case, I find that an employee would reasonably see the presence of security personnel at the meeting on December 17, 2012, as intimidating or coercive. The officers remained outside the conference room and did not participate in the meeting. Similarly, I find that no employee would reasonably see as intimidating or coercive Channell's use of security personnel on December 20, 2012. The officers essentially functioned as witnesses while Channell removed your belongings from your office while you were out on sick leave. In neither case did the presence of security officers independently violate Section 7116(a)(1) of the Statute.

For the reasons described above, I am dismissing your charge. If you want to file an appeal of this action you may do so with the General Counsel of the FLRA at the following address:

Federal Labor Relations Authority
Office of the General Counsel (Attn: Appeals)
1400 K St., N.W., Second Floor
Washington, D.C. 20424-0001

Fax No. 202-482-6608

You have a deadline to file an appeal and must file your appeal no later **June 3, 2013**. This means that if you mail your appeal, you must postmark it by **June 3, 2013**. If you deliver or fax your appeal you must also do that by the same date. Please send a copy of your appeal to my office here in Atlanta.

If you need more time to prepare your appeal, you may ask for an extension. If you ask for an extension, you must do so in a letter you send so that the office at the above address gets it no later than **May 29, 2013**.

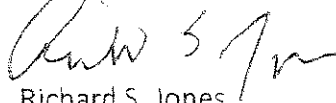
You may also file an appeal, or a request for extension of time to appeal, by e-mail, to ogc.appeals@flra.gov. Please put the case number in the subject line of your e-mail message.

⁷ See note 3, *above*.

⁸ See note 3, *above*.

If you want to know how the General Counsel decides whether or not to grant an appeal, please review section 2423.11(e) of the Authority's Regulations on the Authority's web site: http://www.flra.gov/OGC_Appeals.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. S. Jones", written over the printed name.

Richard S. Jones
Regional Director

Enclosure

cc:

Brooks C. Woerner,
Human Resources Specialist
Civilian Personnel Advisory Center
Building 5304, Sparkman Center
Redstone Arsenal, AL 35898

Sharon S. Powers
108 Kings Cross Drive
Madison, Alabama, 35758

Julia Akins Clark, General Counsel
Federal Labor Relations Authority
1400 K Street NW, 2nd Floor
Washington, DC 20424-0001